

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

6 UNITED STATES OF AMERICA,

Plaintiff, No. CR 08-658 PJH

v. **FINAL PRETRIAL ORDER**

10 | MILLARD CHAMBERS,

Defendant.

12 This matter came be

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At the hearing, the court ruled on several motions in limine and other pretrial issues as

stated on the record and summarized below.

A. Defendant's Motions in Limine

1. Documents and Cell Phones Found During Search of Residence

18 The court GRANTS Chambers' motion to exclude Exh. H, the American Canyon
19 police report, and Exh. L, the child support statement. However, should the government
20 determine that the documents are needed for rebuttal purposes or on cross-examination of
21 defendant, it may seek leave to introduce them. The court also GRANTS Chambers'
motion to exclude Exh. K, the handwritten notes, because they are not sufficiently reliable.

23 Additionally, the GRANTS Chambers' motion to exclude evidence regarding three
24 prior forfeitures and/or seizures, including Exhs. A-G, as irrelevant and likely to mislead
25 and/or confuse the jury and to result in an undue waste of time under Federal Rules of
26 Evidence ("FRE") 402 and 403. Accordingly, the court DENIES the government's related
motion in limine no. 4 to admit the evidence.

The court DENIES Chambers' motion to exclude Exh. J, the speeding tickets linking

1 him to the SUV registered in his wife's name, and finds that the tickets are relevant under
2 FRE 401 and are not unduly prejudicial under FRE 403.

3 Regarding the cell phones, the government clarified that it intends to introduce
4 evidence as to the total number of cell phones discovered at the residence, and also to
5 introduce photographs of the phones, including relevant text messages between Chambers
6 and other coconspirators. The court DENIES Chambers' motion to exclude this evidence.
7 However, the government must establish a sufficient nexus between evidence from
8 individual phones that are introduced and the conspiracy. As for the totality of the phones
9 seized, the court finds that this evidence is relevant as an indicia of narcotics trafficking.

10 **2. Prior Convictions**

11 The court DENIES Chambers' motion to exclude his prior conviction for the
12 unauthorized use of another person's identifying information for an unlawful purpose under
13 California Penal Code § 530.5(A), and finds that the conviction is admissible for
14 impeachment purposes under FRE 609(a)(2) because it is an admission of an act of
15 dishonesty or false statement.

16 Having balanced the probative value of the three prior drug convictions against their
17 prejudicial impact for purposes of Rule 609(a)(1), the court finds that the majority of factors
18 favor exclusion of the prior drug convictions and GRANTS Chambers' motion to exclude
19 these convictions. See *United States v. Alexander*, 48 F.3d 1477, 1487-88 (9th Cir. 1995).

20 **3. Cross-Examination of Fainelli**

21 The court GRANTS Chambers' motion to cross-examine Fainelli re: the conduct
22 underlying the crime charged in Florida state court. However, Chambers is not allowed to
23 cross-examine Fainelli re: the charge or complaint itself under FRE 609. Nor is Chambers
24 allowed to introduce the complaint or any extrinsic evidence of the charge under FRE
25 608(b).

26 **4. Undisclosed 404(b) Evidence**

27 The court DENIES this motion as moot.

28

1 **5. Transcripts of Recordings**

2 The court DENIES Chambers' motion to prohibit the government from displaying
3 transcripts of the original recordings at the time it plays the recordings for the jury. See
4 *United States v. Turner*, 528 F.3d 143, 167 (9th Cir. 1975).

5 **6. Bifurcation**

6 Chambers withdrew this motion at the pretrial hearing.

7 **7. Undisclosed Evidence Under Federal Rule of Criminal Procedure 16**

8 The court DENIES this motion as moot.

9 **8. Omnibus Motion Pursuant to FRE 615**

10 The court GRANTS Chambers' requests to: (1) exclude government witnesses from
11 the courtroom; (2) exclude non-exempt witnesses during motion hearings, opening
12 statements and closing arguments; and to (3) allow only exempt witnesses in the
13 courtroom. The court further notes that the same rules will apply to defense witnesses.

14 The court DENIES' Chambers' requests: (4) to preclude the government from
15 designating more than one case agent as its "representative;" (5) to require any exempt
16 case agents to testify before non-exempt government witnesses or not at all; and (6) that
17 the court require the government to direct the witnesses not to read trial transcripts or
18 discuss the case or their testimony with anyone other than counsel.

19 **B. Government's Motions in Limine**

20 **1. Fainelli's Statement to Agents**

21 The court DENIES the government's motion to introduce the statement, and
22 concludes that the statement is hearsay because the government seeks to introduce the
23 statement for the truth of the matter. If that was not the case, then the statement would be
24 irrelevant.

25 **2. References to Punishment**

26 The court GRANTS the government's motion to exclude any reference to
27 punishment.

1 **3. Criminal Complaint re: Fainelli**

2 For the reasons set forth above re: Chambers' motion in limine no. 3, the court
3 GRANTS the government's motion to preclude Chambers from introducing the complaint.

4 **4. Other Seizures/Forfeitures**

5 For the reasons set forth above re: Chambers' motion in limine no. 1, the court
6 DENIES the government's related motion.

7 **5. Reciprocal Discovery**

8 The court DENIES the government's motion as moot.

9 **B. Jury Instructions**

10 **1. Forfeiture Instructions**

11 Pursuant to Federal Rule of Criminal Procedure 32.2(b), in the event of a guilty
12 verdict, Chambers elects to have the jury decide whether there is a sufficient nexus
13 between the offense(s) and the specific property for which forfeiture is sought.

14 The court will give the six joint forfeiture instructions, but rejects without prejudice the
15 additional six forfeiture instructions proffered by the government. The government may
16 renew its request for the instructions if it becomes clear that they are necessary after trial.

17 **2. Other Instructions**

18 The government is further ORDERED to provide the court with an additional blind
19 set of the model instructions as stated on the record. As for the special instructions, the
20 government is ORDERED to re-do instruction no. 10 per the discussion on the record.
21 The court agrees to hold in abeyance a ruling re: Model Instruction No. 4.10 until the end of
22 trial.

23 The court declines to give Chambers' proffered reasonable doubt instruction, and
24 will instruct the jury pursuant to the relevant model instruction.

25 **IT IS SO ORDERED.**

26 Dated: December 2, 2010



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28 **PHYLLIS J. HAMILTON**
 United States District Judge